

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VERONICA L. KEITH,  
Plaintiff,

v.

CUNA MUTUAL INSURANCE  
AGENCY, INC.,  
Defendant.

NO. 08-01368 RAJ

ORDER

**I. INTRODUCTION**

This matter comes before the court on cross-motions for summary judgment (Dkt. ## 17, 35). Neither party requested oral argument on either motion, and the court finds the motions suitable for resolution on the basis of the parties' briefing and supporting evidence. For the reasons explained below, the court GRANTS IN PART and DENIES IN PART Defendant's motion (Dkt. # 17) and DENIES Plaintiff's motion (Dkt. # 35).

**II. BACKGROUND**

In July 2004, Scott Keith was fatally shot by Donald Roy Skewis during a confrontation about an ongoing property dispute. Mr. Keith was covered under an accidental death and dismemberment policy ("the Policy") issued by Defendant

1 CUNA Mutual Insurance Society (“CUNA”), an Iowa corporation. The Policy  
2 provides benefits in the event of the insured’s accidental death, but excludes benefits  
3 for accidental death caused by, or resulting from, “committing or attempting to commit  
4 a felony.” Long Decl. (Dkt. # 18), Ex. A. The Policy has a section titled “How to File  
5 a Claim,” which also contains limitations provision:

6       You must write Us about a claim within 20 days after the occurrence of  
7 any Loss or as soon as You can. We will provide you with claim forms  
8 or We will send them to you within 15 days after You tell Us about the  
9 claim. If We don’t send the forms in 15 days, You can simply send Us  
10 written proof of loss. The proof must show the date, the character and  
11 extent of the Loss.

12       You must send proof to Us within 90 days after the date of such Loss. If  
13 You cannot send proof to Us within 90 days, You must do so as soon as  
14 You can. Unless you have been legally incapable of filing the proof of  
15 loss, We won’t accept it if it is filed after one year from the time it  
16 should have been filed. **You can’t start any legal action against Us  
17 until 60 days after You send Us proof of loss and You can’t start any  
18 legal action against Us more than three years (six years for South  
19 Carolina residents) after You have sent the proof.**

20 *Id.* (emphasis added). The Policy defines “Loss” as an “injury that results in Loss of  
21 life . . . of an Insured Person and occurs while the Policy is in force.” *Id.*

22       Plaintiff Veronica Keith, Mr. Keith’s wife, was the Policy’s beneficiary. Ms.  
23 Keith submitted proof of loss on November 1, 2004. CUNA denied the claim on  
24 December 9, 2004, after the Thurston County Sheriff’s Office represented that Mr.  
25 Keith had threatened Mr. Skewis with a baseball bat, and was thus attempting to  
26 commit a felony. CUNA’s denial letter included the following language: “CUNA  
Mutual Group reserves the right to rely on and assert any and all policy defenses  
which are or may become applicable to your claim. If you should have any questions

1 concerning this claim or feel that we have been given incorrect information, please  
2 contact me[.]” Long Decl., Ex. C.

3 On June 30, 2006, Ms. Keith filed a wrongful death lawsuit against Mr. Skewis.  
4 She sent a letter to CUNA on August 31, 2006, requesting a review of her claim in  
5 light of new evidence she had obtained for purposes of the wrongful death lawsuit.  
6 CUNA reaffirmed its denial of Ms. Keith’s claim on October 16, 2006, stating that the  
7 prosecutor’s office had informed CUNA that the homicide was justifiable. The denial  
8 letter reiterated:

9 CUNA Mutual Group reserves the right to rely on and assert any and all  
10 policy defenses which are or may become applicable to your claim. We  
11 regret this action is necessary. If you feel our decision is based on  
12 incomplete or incorrect information, we will be happy to review any  
additional information you would like to provide.

13 Long Decl., Ex. E.

14 On May 8, 2007, Ms. Keith’s attorney wrote to CUNA to request  
15 reconsideration of the claim, contending that CUNA’s reliance on the prosecutor’s  
16 decision not to prosecute was unreasonable because prosecutors consider factors like  
17 budget concerns and likelihood of conviction when deciding whether to prosecute,  
18 which is not necessarily related to whether Mr. Keith was attempting to commit a  
19 felony when he was killed. *See* Long Decl., Ex. F.

20 CUNA responded on June 20, 2007, reaffirming its denial of Ms. Keith’s claim  
21 and contending that its denial was based on the representations that Mr. Keith was  
22 attempting to commit a felony when he was shot. Based on that information, CUNA  
23 reaffirmed its position that Ms. Keith’s loss was not covered by the Policy. And again,  
24 the denial letter included the following language:

25 CUNA Mutual Group reserves the right to rely on and assert any and all  
26 policy defenses which are or may become applicable to your claim. We

1 regret this action is necessary. If you feel our decision is based on  
2 incomplete or incorrect information, we will be happy to review any  
3 additional information you would like to provide.

4 Long Decl., Ex. G.

5 On June 16, 2008, Ms. Keith sent a letter to notify CUNA of her claim under  
6 Washington's Insurance Fair Conduct Act ("IFCA") for denial of coverage. *See Beck*  
7 Decl. (Dkt. # 36), Ex. E at 46. The letter indicated that, pursuant to IFCA, CUNA had  
8 twenty days to resolve the claim. CUNA never responded to this notice.

9 On July 15, 2008, a jury found Mr. Skewis liable for the killing of Mr. Keith.  
10 Ms. Keith filed this lawsuit on August 28, 2008, bringing claims for breach of  
11 contract, bad faith, violation of the Washington Consumer Protection Act ("CPA"),  
12 and violation of the Washington Insurance Fair Conduct Act ("IFCA"). CUNA has  
13 moved for summary judgment against all of Ms. Keith's claims as time-barred. Ms.  
14 Keith has cross-moved for partial summary judgment, requesting that the court find  
15 CUNA liable on all of her claims.

### 16 **III. ANALYSIS**

#### 17 **A. Standard of Review on Summary Judgment.**

18 Summary judgment is appropriate if there is no genuine issue of material fact  
19 and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).  
20 The moving party bears the initial burden of demonstrating the absence of a genuine  
21 issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the  
22 moving party meets that initial burden, the opposing party must then set forth specific  
23 facts showing that there is a genuine issue of fact for trial in order to defeat the motion.  
24 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).  
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1       **B.     The Policy’s Limitation Provision is Enforceable and Ms. Keith’s Contract**  
2       **Claim is Time-Barred.**<sup>1</sup>

3               CUNA argues that Ms. Keith’s lawsuit is time-barred under the Policy’s  
4       limitations provision because the suit was filed more than three years after Ms. Keith  
5       submitted her proof of her husband’s death. Ms. Keith presents alternative arguments:  
6       (1) if the limitations provision is enforceable, the Ms. Keith’s suit is nonetheless not  
7       time-barred because she filed within three years of the last date on which she sent  
8       information to CUNA; or (2) the limitations provision is not enforceable due to either  
9       CUNA’s conduct or Washington statute. The court will address each of Ms. Keith’s  
10      alternative arguments in turn.

11              **1. The Plain Language of the Limitations Provision Indicates That the**  
12              **Triggering Event is Filing the Proof of Loss.**

13              CUNA contends that the three-year period referenced in the limitations  
14      provision runs from the date the insured files the proof of loss. Ms. Keith contends  
15      that the three-year period begins to run on the last date on which an insured submits  
16      evidence.

17              The interpretation of an insurance contract is a matter of law. *Greene v. Young*,  
18      113 Wn. App. 746, 752 (2002). An undefined term used in an insurance contract is  
19      given its “plain, ordinary, and popular” meaning. *Id.* (quoting *Kish v. Ins. Co. of N.*  
20      *Am.*, 125 Wn.2d 164, 170 (1994) (quoting *Boeing Co. v. Aetna Cas. & Sur. Co.*, 113  
21      Wn.2d 869, 877 (1990))). A court should “consider the policy as a whole, and [] give  
22      it a ‘fair, reasonable, and sensible construction as would be given to the contract by the  
23      average person purchasing insurance.’” *Quadrant Corp. v. Am. States Ins. Co.*, 154

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<sup>1</sup> CUNA administers its policies in Iowa. The parties agree that there is no conflict of law (between Washington  
26      and Iowa law) as to the issues in CUNA’s motion, and that the court should apply Washington law to resolve  
    those issues. *See* Def.’s Mot. (Dkt. # 17) at 6, Pltf.’s Resp. (Dkt. # 37) at 7.

1 Wn.2d 165, 171 (2005) (quoting *Weyerhaeuser Co. v. Commercial Union Ins. Co.*,  
2 142 Wn.2d 654, 666 (2000)).

3 The parties' dispute centers on one sentence of the limitations provision: "You  
4 can't start any legal action against Us until 60 days after You send Us proof of loss  
5 and You can't start any legal action against Us more than three years (six years for  
6 South Carolina residents) after You have sent the proof." According to Ms. Keith, the  
7 reference at the end of the sentence to "the proof" is a general term referring to any  
8 type of proof or evidence. CUNA contends that "the proof" refers to the sentence's  
9 previous reference to "proof," in the context of "proof of loss."

10 The court agrees with CUNA's interpretation. In the context of this sentence,  
11 "the proof" is a shorter reference back to the earlier "proof of loss," because the  
12 sentence intends to define specific periods after a fixed point in time. It does not  
13 contemplate multiple submissions of proof; if it did, consistent with Ms. Keith's  
14 interpretation, it would read something like ". . . You can't start any legal action  
15 against Us more than three years . . . after the last date on which You have sent proof."  
16 Instead, the sentence first refers to a 60-day period after sending the proof of loss, and  
17 then another three-year period after sending "the proof." Based on the structure of this  
18 sentence, the only fair, reasonable, and sensible interpretation is that "the proof" is a  
19 reference to the earlier "proof of loss."

20 Ms. Keith attempts to inject ambiguity into the sentence's meaning via the  
21 deposition testimony of former CUNA insurance adjuster Sue Allen. Ms. Allen wrote  
22 in Ms. Keith's CUNA file that her date of "proof" was September 5, 2006 (the date  
23 CUNA received Ms. Keith's August 31, 2006 letter providing new information), and  
24 testified that "proof" means evidence generally but "proof of loss" means proof of  
25 death. *See* Beck Decl. (Dkt. # 36), Ex. B at 33-34. According to Ms. Allen, "proof of  
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1 loss” is defined for purposes of the Policy, but CUNA internal documents also use the  
2 term “proof date” to refer to the last date that any evidence was received.

3 The CUNA internal documents and Ms. Allen’s testimony are consistent with  
4 the court’s interpretation of the policy language: the “proof date” listed on CUNA  
5 documents is not the same as the “proof of loss” date mentioned in the limitations  
6 provision. Thus, the limitations provision is unambiguous: the submission of the proof  
7 of loss is the event which triggers the beginning of the three-year period. Because Ms.  
8 Keith’s contract claim was filed more than three years after CUNA received the proof  
9 of loss, her contract claim is time-barred.

10 **2. Neither Waiver nor Estoppel Applies Here.**

11 According to Ms. Keith, waiver or estoppel should prevent CUNA from  
12 enforcing the limitations period against her because its denial letters encouraged Ms.  
13 Keith to continue submitting information rather than filing a lawsuit. *See Staats v.*  
14 *Pioneer Ins. Ass’n*, 55 Wn. 51, 53-57 (1909) (finding that insurance company had  
15 waived a limitations defense because its agent told the plaintiff that he would not take  
16 any action on the claim until third parties took action, by which time the limitations  
17 period had expired); *Logan v. North-West Ins. Co.*, 45 Wn. App. 95, 100 (1986)  
18 (holding that an insurer is estopped from asserting a policy limitation if the “insurer’s  
19 agreement, declaration, or course of action leads the insured to conduct based on that  
20 insured’s honest belief that forfeiture of his policy will not occur.”).

21 There is no evidence that CUNA induced, misled, or encouraged Ms. Keith not  
22 to file a lawsuit. CUNA sent an initial denial of coverage letter dated December 9,  
23 2002, and each successive letter with Ms. Keith reaffirmed that initial denial of  
24 coverage. Each successive letter also stated that CUNA reserved the right to rely on  
25 all policy defenses. Though the letters stated that CUNA would review additional  
26 information, they did not suggest that CUNA’s coverage decision was not final or

1 otherwise discourage filing a lawsuit. Thus, the evidence does not support Ms. Keith's  
2 argument for waiver or estoppel.

3 **3. RCW 48.18.200 Does Not Invalidate the Limitations Provision, and**  
4 **Even if it Did, Ms. Keith's Contract Claim is Still Time-Barred.**

5 Ms. Keith contends that the limitations provision is void because it violates  
6 RCW 48.18.200, which provides, in relevant part:

7 (1) No insurance contract delivered or issued for delivery in this state  
8 and covering subjects located, resident, or to be performed in this state,  
9 shall contain any condition, stipulation, or agreement . . . (c) limiting  
10 right of action against the insurer to a period of less than one year from  
11 the time when the cause of action accrues in connection with all  
12 insurances other than property and marine and transportation insurances.  
In contracts of property insurance, or of marine and transportation  
insurance, such limitation shall not be to a period of less than one year  
from the date of the loss.

13 (2) Any such condition, stipulation, or agreement in violation of this  
14 section shall be void, but such voiding shall not affect the validity of the  
other provisions of the contract.

15 According to Ms. Keith, the limitations provision violates this statute because  
16 of the triggering event. Ms. Keith argues that the clause is unenforceable because the  
17 three-year period is triggered by the filing of the proof of loss, and not the accrual of a  
18 cause of action as contemplated by RCW 48.18.200.

19 Ms. Keith has not explained how this distinction makes a difference in this  
20 case, and has not cited any authority regarding this argument. The court knows of no  
21 authority requiring that a limitations provision be triggered by the accrual of a cause of  
22 action. In fact, other courts have enforced limitations provisions with similar  
23 triggering events. *See, e.g., Simms v. Allstate Ins. Co.*, 27 Wn. App. 872, 878 (1980)  
24 (limitation period began to run on date of loss); *Schaeffer v. Farmers Ins. Exchange*,  
25 2002 WL 662889 (Wash. App. Div. 1 April 22, 2002) (same).  
26



1 Furthermore, even if the limitations provision was invalidated by RCW  
2 48.18.200, the statute would provide that Ms. Keith has one year to file a lawsuit from  
3 the time the cause of action accrues. Ms. Keith's contract claim alleges that CUNA  
4 breached the insurance policy by failing to provide coverage for her claim, and it is  
5 well-established Washington law that a claim for breach of contract accrues upon  
6 breach. *See Schwindt v. Commonwealth Ins. Co.*, 140 Wn.2d 348, 353 (2000); *Safeco*  
7 *Ins. Co. v. Barcom*, 112 Wn.2d 575, 583 (1989); *Taylor v. Puget Sound Power & Light*  
8 *Co.*, 64 Wn.2d 534, 537-38 (1964). Thus, Ms. Keith's cause of action for breach of  
9 contract accrued on December 9, 2004, when CUNA denied coverage. If RCW  
10 48.18.200 applied, then Ms. Keith's contract claim is still time-barred, because she  
11 filed after December 9, 2005.

12 **4. The Limitations Provision Does Not Apply to Ms. Keith's Other**  
13 **Claims.**

14 The limitations provision states that it limits "any legal action" filed by the  
15 insured against the insurer. Thus, according to CUNA, the limitations provision bars  
16 all of Ms. Keith's claims, not just the contract claim. But Ms. Keith contends that  
17 because the provision does not expressly apply to all claims, it should not bar her non-  
18 contract claims.

19 As CUNA admits, no Washington court has construed a limitations provision as  
20 broad as the one here. The more typical limitations provision includes language  
21 referencing claims on or related to the policy. *See, e.g., Schwindt*, 140 Wn.2d at 355-  
22 56 (limitations provision refers to claims "on this policy for the recovery of any  
23 claim"); *Simms*, 27 Wn. App. at 878 (1980) (same); *Schaeffer*, 2002 WL 662889  
24 (limitations provision refers to "[s]uit on or arising out of this policy"); *1515-1519*  
25 *Lakeview Blvd. Condo. Ass'n v. State Farm Fire & Cas. Co.*, 2001 WL 244383 (Wash.  
26 App. Div. 1 March 12, 2001) (limitations provision refers to "legal action against us

1 under this insurance”). In each of those cases, the court held that the limitations  
2 provision did not bar tort or statutory claims, but applied only to claims on the policy.

3 The *Lakeview Blvd.* analysis is particularly instructive here, because the  
4 language is arguably the broadest and therefore most similar to the limitations  
5 provision before this court. In that case, the insured raised claims against the insurer  
6 (1) on the contract, (2) under Washington’s Consumer Protection Act (“CPA”), and (3)  
7 for unfair trade practices. The limitations provision in the insurance contract applied  
8 to “legal action against us under this insurance,” and the insurer contended that the  
9 provision applied to all of the insurer’s claims because none of them would exist  
10 without the insurance policy.

11 Though the court agreed with the insurer as to the claim for coverage under the  
12 contract, the court rejected the insurer’s arguments as to the other claims:

13 Here, the suit limitation clause bars actions “under this insurance” unless  
14 brought within two years after the date of loss. Like the one-year limit  
15 for claims “on the policy” in *Simms*, the clause here should not bar  
16 actions arising under an independent statutory scheme such as the  
17 Consumer Protection Act. To do so would frustrate the independent  
duty of good faith and fair dealing that arises from the Act.

18 *Lakeview Blvd.*, 2001 WL 244383 \*4. The *Schaeffer* court applied similar reasoning  
19 when construing a provision limiting claims “on or arising out of this policy”: “The  
20 insurer’s duty of good faith and fair dealing arises not just from the contract, but from  
21 an independent source. . . . The insurer should not be able to avoid the policy behind  
22 the CPA by inserting the one year limitations period authorized by RCW  
23 48.18.200(1)(c).” 2002 WL 662889 \*4. Both of these courts focused on the source of  
24 the obligation that underlies the legal action: an insurance contract should be able to  
25 limit a claim for breach of a contractual obligation, but not a claim based on duties  
26 imposed by other sources.

1           The court agrees with this reasoning. Though the limitations provision  
2 language here is arguably broader than in *Lakeview Blvd.* or *Schaeffer*, both of those  
3 courts' holdings were not limited by the contractual language, but focused on the  
4 independent nature of the duties or statutes that had been allegedly breached or  
5 violated. Applying the Policy's contractual limitations provision to all of Ms. Keith's  
6 claims would allow CUNA to avoid its extra-contractual duties or to frustrate the  
7 purpose of statutory schemes. For this reason, the court holds that the limitations  
8 provision does not apply to Ms. Keith's non-contractual claims.

9       **C. Ms. Keith's IFCA Claim Fails Because IFCA Does Not Apply**  
10       **Retroactively.**

11           In November 2007, Washington voters passed Referendum 67, popularly  
12 known as IFCA. The act took effect on December 6, 2007, and was codified as RCW  
13 48.30.015. IFCA creates a private cause of action to a first-party claimant who has  
14 been unreasonably denied insurance coverage, and also provides for treble damages  
15 and an attorney fee award. *See* RCW 48.30.015(1)-(3). IFCA requires that a first-  
16 party claimant "must provide written notice of the basis for the cause of action to the  
17 insurer and the office of the insurance commissioner" twenty days prior to filing an  
18 IFCA action. RCW 48.30.015(8)(a).

19           Ms. Keith does not dispute the effective date of IFCA or that the act does not  
20 apply retroactively. Instead, she claims that IFCA applies to this case because CUNA  
21 continued to deny coverage after IFCA's effective date. The court disagrees.

22           The last date on which CUNA wrote to Ms. Keith to deny her coverage was  
23 June 20, 2007, before IFCA was enacted. An IFCA claim is based on an unreasonable  
24 denial of coverage. *See* RCW 48.30.015(1) ("Any first party claimant to a policy of  
25 insurance who is unreasonably denied a claim for coverage or payment of benefits by  
26 an insurer may bring an action . . ."). Denial of coverage is the predicate event for an

1 IFCA claim. But here, CUNA last affirmatively denied coverage in June 2007,  
2 months before IFCA went into effect.<sup>2</sup> Thus, Ms. Keith's IFCA claim must fail.

3 **D. Issues of Fact Preclude Summary Judgment on Ms. Keith's Remaining**  
4 **Claims.**<sup>3</sup>

5 The only claims remaining at this point are Ms. Keith's claims for bad faith and  
6 violation of the CPA. Ms. Keith has moved for summary judgment as to liability on  
7 those claims, arguing that CUNA's denial of coverage and investigation of her claim  
8 was unreasonable and in bad faith because CUNA relied on representations from law  
9 enforcement officials to apply the felony exclusion and did not adequately consider or  
10 investigate the evidence she submitted.

11 CUNA contends that it was reasonable to consider the decisions of law  
12 enforcement officials, and that its evaluation of Ms. Keith's evidence was sufficient,  
13 given its determination that her evidence was not probative as to whether Mr. Keith  
14 had committed a felony before he was killed. According to CUNA, there is at least an  
15 issue of fact as to the reasonableness of its conduct, such that summary judgment is  
16 precluded.

17 Bad faith is a tort with four elements: (1) the defendant had a duty of good  
18 faith; (2) the defendant breached the duty; and (3) the breach is the proximate cause of  
19 (4) damages. *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478, 485 (2003). A bad-faith denial  
20 of insurance coverage may also give rise to a claim under Washington's Consumer  
21 Protection Act ("CPA"), RCW Ch. 19.86. *See Transcontinental Ins. Co. v.*

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22  
23 <sup>2</sup> The June 2008 demand is not a predicate event for an IFCA claim because it does not contain any different  
24 information or evidence than what had been submitted to CUNA in the past. Thus, the last denial of coverage  
25 based on a renewed request occurred in June 2007, before IFCA was enacted.

26 <sup>3</sup> Ms. Keith submitted a declaration to support her reply brief on her motion for partial summary judgment. *See*  
Stempel Decl. (Dkt. # 43). CUNA moved to strike the declaration, on the grounds that it was inappropriate to  
submit new evidence with a reply brief, and that the statements in the declaration lack foundation, are  
immaterial, and rely on facts not in evidence. *See* Def.'s Surreply (Dkt. # 45). The court did not consider the  
Stempel declaration in ruling on the pending motions, and thus the motion to strike is DENIED as moot.

1 *Washington Pub. Utils. Dists.' Util. Sys.*, 111 Wn.2d 452, 470-71 (1988). But, if an  
2 insurer denies coverage based on a reasonable interpretation of a policy and its  
3 conduct is reasonable, then the denial is not in bad faith and the insurer does not  
4 violate the CPA. *See Transcontinental*, 111 Wn.2d at 470. The *Smith* court discussed  
5 the reasonableness inquiry in a summary judgment context:

6       Whether an insurer acted in bad faith remains a question of  
7 fact . . . . If the insured claims that the insurer denied coverage  
8 unreasonably in bad faith, then the insured must come forward with  
9 evidence that the insurer acted unreasonably. The policyholder has the  
10 burden of proof. The insurer is entitled to summary judgment if  
11 reasonable minds could not differ that its denial of coverage was based  
12 upon reasonable grounds. If, however, reasonable minds could differ  
that the insurer's conduct was reasonable, or if there are material issues  
of fact with respect to the reasonableness of the insurer's action, then  
summary judgment is not appropriate.

13 *Smith*, 150 Wn.2d at 485-86 (citations omitted).

14       In this case, the evidence submitted by both parties allows reasonable minds to  
15 differ as to whether CUNA's conduct was reasonable. Ms. Keith contends it was  
16 unreasonable for CUNA to rely on statements from law enforcement rather than  
17 conduct its own independent investigation, but has cited no authority requiring an  
18 insurer to perform an independent investigation. In fact, Ms. Keith submitted  
19 deposition testimony from a CUNA employee who testified as the Fed. R. Civ. P.  
20 30(b)(6) representative of CUNA, stating that CUNA often relies on statements from  
21 law enforcement. *See Beck Decl.* (Dkt. # 36), Ex. C at 77:17-21 (“[CUNA] rel[ies]  
22 very heavily on [authorities in the jurisdiction] to perform the investigation. They’re  
23 in the locale. They have greater training than myself and my staff and are typically  
24 more thorough with respect to all the elements of their investigation.”) That same  
25 employee testified that CUNA typically hires a third-party investigator to investigate  
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1 foreign claims in locations where CUNA has discovered that the local authorities do  
2 not conduct a thorough investigation. *See* Beck Decl., Ex. C at 78:15-79:15. Ms.  
3 Keith's submissions did not conclusively establish that the felony exception did not  
4 apply, but they may have warranted further investigation on CUNA's part. Under  
5 these circumstances, it is not clear that CUNA's conduct was unreasonable or in bad  
6 faith. Because reasonable minds could differ on those issues, summary judgment is  
7 precluded.

#### 8 **IV. CONCLUSION**

9 For the foregoing reasons, the court GRANTS IN PART and DENIES IN  
10 PART Defendants' motion (Dkt. # 17) and DENIES Plaintiff's motion (Dkt. # 35).

11 IT IS SO ORDERED.

12  
13 DATED this 23<sup>rd</sup> day of June, 2009.

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17 The Honorable Richard A. Jones  
18 United States District Judge  
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